THIRD SUPPLEMENT TO THE GIBRALTAR GAZETTE

No. 3,632 of 6th December, 2007

B. 41/07

CRIMINAL JUSTICE (AMENDMENT) ACT 2007

ARRANGEMENT OF SECTIONS

Section

THIRD SUPPLEMENT TO THE GIBRALTAR GAZETTE
No. 3,632 of 6th December, 2007

B. 41/07

BILL

FOR

AN ACT to amend the Criminal Justice Act 1995 to partly transpose into the law of Gibraltar Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing, and to fully transpose into the law of Gibraltar Commission Directive 2006/70/EC of 1 August 2006 laying down implementing measures for Directive 2005/60/EC of the European Parliament and of the Council as regards the definition of 'politically exposed person' and the technical criteria for simplified customer due diligence procedures and for exemption on grounds of a financial activity conducted on an occasional or very limited basis, and for connected purposes.

ENACTED by the Legislature of Gibraltar.

Title and commencement.

1. This Act may be cited as the Criminal Justice (Amendment) Act 2007 and comes into operation on the day of publication.

Amendment of section 1.

2. For section 1 of the Criminal Justice Act 1995 (hereinafter referred to as "the principal Act") substitute–

> "1. This Act may be cited as the Crime (Money Laundering and Proceeds) Act 2007.".

Amendment of section 2.

3. Section 2 of the principal Act is amended as follows–

(a) subsection "(2A)(1)" is renumbered "(2A)";

(b) in renumbered subsection (2A) for paragraph (a) substitute–

"(a) knows, suspects or has reasonable grounds to suspect that another person is engaged in money laundering, or is attempting to launder money";

(c) for "(2) A person is not guilty of an offence under subsection (1) if–" substitute "(2B) A person is not guilty of an offence under subsection (2A) if–"

(d) after subsection (7) insert-

"(8) In this Part and in Part III–

"Gibraltar Financial Intelligence Unit" and "GFIU" means that body comprised of police officers and customs officers with responsibility, inter alia, for receiving, processing, analysing and disseminating information relating to suspect financial transactions;

"the Money Laundering Directive" means Council Directive 2005/60/EC on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing, as the same may from time to time be amended."

New section 5.

4. For section 5 of the principal Act substitute–

"5.(1) A person is guilty of an offence if–

(a) he discloses any matter within subsection (2); and

(b) the information on which the disclosure is based came to him in the course of a business or activity to which section 8(1) applies.

(2) The matters are–

(a) that either he or another person has made a disclosure under this Part–

(i) to a police officer;

(ii) to a customs officer;

(iii) the appropriate person under section 18; or

(iv) to the GFIU,

of information that came to him in the course of a business or activity listed in section 8(1);or

(b) that an investigation into allegations that an offence under this Part has been committed is being contemplated or is being carried out.

(3) Nothing in subsections (1) and (2) makes it an offence for a notary, independent legal professional, auditor, external accountant or tax advisor to disclose any information or other matter–

(a) to a client or his representative in connection with the giving by the notary, independent legal professional, auditor, external accountant or tax advisor of advice in connection with ascertaining the legal position for their client or performing their task of defending or representing that client in, or concerning, judicial proceedings, including advice on instituting or avoiding proceedings, whether such information is received or obtained before, during or after such proceedings; or

(b) to any person, in contemplation of, or in connection with, ascertaining the legal position for their client or

performing their task of defending or representing that client in, or concerning, judicial proceedings, including advice on instituting or avoiding proceedings, whether such information is received or obtained before during or after such proceedings.

(4) Subsection (2) does not apply in relation to any information or other matter which is disclosed with a view to furthering any criminal purpose.

(5) A person shall not incur any liability under this section where the disclosure is made by a credit or financial institution belonging to the same group as defined by article 2(12) of Directive 2002/87/EC and–

(a) the disclosure is made to an institution that is subject to the requirements of the Money Laundering Directive; or

(b) the disclosure is made to an institution in a State or Territory other than an EEA State or Territory which imposes requirements equivalent to those laid down in the Money Laundering Directive and is supervised for compliance with those requirements.

(6) Nothing in this section shall prevent a disclosure by a person to whom article 2(1)(3)(a) and (b) of the Money Laundering Directive applies (an auditor, external accountant, tax advisor, notary or independent legal professional) if-

(a) the disclosure is to another such person;

(b) both the person making the disclosure and the person to whom it is made perform their professional activities in an EEA state or territory or in a country or territory which imposes requirements that are equivalent to the Money Laundering Directive; and

(c) those persons perform their professional activities within different undertakings that share common ownership, management or control.

(7) Nothing in this section shall prevent the disclosure of information when this is done for the purposes of preventing money laundering and the following conditions are satisfied–

(a) the disclosure is between a person to whom article 2(1)(1), (2) and (3)(a) and (b) of the Money Laundering Directive applies and another person from the same professional category;

(b) the person to whom the disclosure is made is situated within the EEA or if outside the EEA, in a State or Territory which imposes requirements that are equivalent to the Money Laundering Directive,

(c) the disclosure relates to the same customer and the same transaction; and

(d) the person making the information and the person receiving it are subject to equivalent duties of professional confidentiality and protection of personal data (within the meaning of section 2 of the Data Protection Act 2004).

(8) A person shall not be guilty of an offence under this section where he makes a disclosure to his client and the purpose of that disclosure was to seek to dissuade the client from engaging in criminal activity.

(9) In this section "money laundering" means–

(a) doing any act which constitutes an offence under section 2, 3 or 4;

(b) doing any act which constitutes an offence under sections 5, 6, 7 or 8 of the Terrorism Act 2005,

(c) doing any act which constitutes an offence under any other enactment that applies in Gibraltar and that offence relates to terrorism or the financing of terrorism,

or in the case of an act done otherwise than in Gibraltar, would constitute such an offence if done in Gibraltar.

(10) For the purposes of subsection (9), having possession of any property shall be taken to be doing an act in relation to it.

(11) A person guilty of an offence under this section shall be liable–

(a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the standard scale or to both, or

(b) on conviction on indictment, to imprisonment for a term not exceeding five years or to a fine or to both.

(12) No police or customs officer or other person shall be guilty of an offence under this section in respect of anything done by him in the course of acting in connection with the enforcement, or intended enforcement, of any provision of this Act or of any other enactment relating to an offence to which this Part applies.

Restriction on disclosure.

5A.(1) Where the Commission of the European Communities adopts a decision pursuant to article 40(4) of the Money Laundering Directive, the Minister may, by notice in the Gazette, prohibit the disclosure of information, by persons subject to the provisions of this Act, to any person who is situated in the State or Territory to which the notice relates.

(2) A person who contrary to subsection (1) makes a disclosure concerning a State or Territory in respect of which the Minister has notified under subsection (1) is guilty of an offence and is liable-

(a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the standard scale or to both; or

(b) on conviction on indictment, to imprisonment for a term not exceeding five years or to a fine or to both.".

Amendment of heading to Part III.

5. At the end of the heading of Part III of the principal Act insert "AND TERRORIST FINANCING".

Amendment of section 6.

6. In section 6 of the principal Act–

(a) in subsection (1)-

(i) the definition "Consolidated Banking Directive" shall be re-listed in the appropriate place namely after the definition of "Commissioner of Insurance";

(ii) after the definition "Banking Supervisor" insert–

""beneficial owner" has the same meaning as in Article 3(6) of the Money Laundering Directive;";

(iii) the definition ""Case 1", "Case 2", "Case 3" and "Case 4" have the meanings given in section 11;" is repealed;

(iv) after the definition "Consolidated Banking Directive" insert–

""credit institution" means a credit institution, as defined in the first subparagraph of Article 1(1) of Directive 2000/12/EC of the European Parliament and of the Council of 20 March 2000 relating to the taking up and pursuit of the business of credit institutions (1), including branches within the meaning of Article 1(3) of that Directive located in the Community of credit institutions having their head offices inside or outside the Community;";

(v) after the definition "Customs Officer" insert–

““Electronic Money Directive” means Directive 2000/46/EC on the taking up and pursuit and prudential supervision of the business of electronic money institutions;”;

(vi) after the definition “European Institution” insert–

““financial institution” means–

(a) an undertaking other than a credit institution which carries out one or more of the operations included in points 2 to 12 and 14 of Annex I to Directive 2000/12/EC, including the activities of currency exchange offices (bureaux de change) and of money transmission or remittance offices;

(b) an insurance company duly authorised in accordance with Directive 2002/83/EC of the European Parliament and of the Council of 5 November 2002 concerning life assurance, insofar as it carries out activities covered by that Directive;

(c) an investment firm as defined in point 1 of Article 4(1) of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments;

(d) a collective investment undertaking marketing its units or shares;

(e) an insurance intermediary as defined in Article 2(5) of Directive 2002/92/EC of the European Parliament and of the Council of 9 December 2002 on insurance mediation, with the exception of intermediaries as mentioned in Article 2(7) of that Directive, when they act in respect of life insurance and other investment related services;

(f) branches, when located in the Community, of financial institutions as referred to in points (a)

to (e), whose head offices are inside or outside the Community;";

(vii) for the definition "Financial Services Commissioner" substitute–

"Financial Services Commission" means the Financial Services Commission established under section 3 of the Financial Services Commission Act 2007;";

(viii) the definitions "the Money Laundering Directive" and "one-off transaction" are repealed;

(ix) after the definition "Insurance Supervisor" insert–

""Minister" means the Minister with responsibility for finance;

"money service business" means an undertaking which by way of business operates a currency exchange office, transmits money (or any representations of monetary value) by any means or cashes cheques which are made payable to customers;";

(x) in the definition of "Police Officer" after "Police Act" insert "2006";

(xi) after the definition "Police Officer" insert–

""regulated market"–

(a) within the EEA, has the meaning given by point 14 of Article 4(1) of Directive 2004/39/EC on markets in financial instruments; and

(b) outside the EEA, means a regulated financial market which subjects companies whose securities are admitted to trading to disclosure obligations which are contained in international

standards and are equivalent to the specified disclosure obligations;";

(xii) after the definition "Savings Bank" insert–

""the specified disclosure obligations" means disclosure requirements consistent with–

(a) Article 6(1) to (4) of Directive 2003/6/EC on insider dealing and market manipulation;

(b) Articles 3, 5, 7, 8, 10, 14 and 16 of Directive 2003/71/EC on the prospectuses to be published when securities are offered to the public or admitted to trading;

(c) Articles 4 to 6, 14, 16 to 19 and 30 of Directive 2004/109/EC relating to the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market; or

(d) Community legislation made under the provisions mentioned in paragraphs (a) to (c);";

(b) for subsection (2) substitute–

"(2) In this Part "euro" means the currency unit as defined in Council Regulation (EC) No. 974/98 on the introduction of the euro.";

(c) for subsection (3) substitute–

"(3) In this Part, except in so far as the context otherwise requires, "money laundering" means doing any act which constitutes an offence–

(a) under section 2, 3 or 4 of this Act;

(b) section 54, 55 or 56 of the Drug Trafficking Offences Act, 1995;

(c) doing any act which constitutes an offence under sections 5, 6, 7 or 8 of the Terrorism Act 2005;

(d) doing any act which constitutes an offence under any other enactment that applies in Gibraltar and that offence relates to terrorism or the financing of terrorism,

or in the case of an act done outside Gibraltar would constitute such an offence under that Act if done in Gibraltar.";

(d) in subsection (5) for "obtained, under procedures maintained by him in accordance with section 11," substitute "through the application of customer due diligence measures obtained,".

Substitution of section 7.

7. For section 7 of the principal Act substitute–

"7. In this Part "business relationship" means a business, professional or commercial relationship between a relevant financial business and a customer, which is expected by the relevant financial business, at the time when contact is established, to have an element of duration.".

Amendment of section 8.

8.(1) In section 8(1) of the principal Act–

(a) in paragraph (a) immediately preceding the words "deposit-taking" insert "electronic money issuer or"; and

(b) for paragraph (k) substitute–

"(k) controlled activity other than a general insurance intermediator under the Financial Services (Investment and Fiduciary Services) Act;";

(c) in paragraph (l) for "EUR 15 000" substitute "15,000 euro".

(2) Subsection 8(3) of the principal Act is renumbered subsection 8(4) and the following shall be inserted as subsection 8(3)–

"(3) The Minister may by regulations add to, delete or otherwise amend the list of businesses or activities set out in section 8(1)."

Substitution of sections 9 and 10.

9. For sections 9 and 10 of the principal Act substitute–

"Customer Due Diligence

Meaning of customer due diligence measures.

10A. "Customer due diligence measures" means–

(a) identifying the customer and verifying the customer's identity on the basis of documents, data or information obtained from a reliable and independent source;

(b) identifying, where there is a beneficial owner who is not the customer, the beneficial owner and taking adequate measures, on a risk-sensitive basis, to verify his identity so that the relevant financial business is satisfied that it knows who the beneficial owner is, including, in the case of a legal person, trust or similar legal arrangement, measures to understand the ownership and control structure of the person, trust or arrangement; and

(c) obtaining information on the purpose and intended nature of the business relationship.

Application of customer due diligence measures.

10B.(1) Subject to sections 10D, 10E, 10G to 10K, 10M(4) and 10N, a relevant financial business must apply customer due diligence measures when it-

(a) establishes a business relationship;

(b) carries out an occasional transaction amounting to 15,000 euro or more, whether the transaction is carried out in a single operation or in several operations which appear to be linked;

(c) suspects money laundering or terrorist financing;

(d) doubts the veracity or adequacy of documents, data or information previously obtained for the purposes of identification or verification.

(2) Subject to section 10M(4), a relevant financial business must also apply customer due diligence measures at other appropriate times to existing customers on a risk-sensitive basis.

(3) A relevant financial business must–

(a) determine the extent of customer due diligence measures on a risk-sensitive basis depending on the type of customer, business relationship, product or transaction; and

(b) be able to demonstrate to his supervisory authority that the extent of the measures is appropriate in view of the risks of money laundering and terrorist financing.

(4) Where–

(a) a relevant financial business is required to apply customer due diligence measures in the case of a trust, legal entity (other than a body corporate) or a legal arrangement (other than a trust); and

(b) the class of persons in whose main interest the trust, entity or arrangement is set up or operates is identified as a beneficial owner, the relevant financial business is not required to identify all the members of the class.

Ongoing monitoring.

10C.(1) A relevant financial business must conduct ongoing monitoring of a business relationship.

(2) "Ongoing monitoring" of a business relationship means the scrutiny of transactions undertaken throughout the course of the relationship (including, where necessary, the source of funds) to ensure that the transactions are consistent with the relevant financial business's or person's knowledge of the customer, his business and risk profile and keeping the documents, data or information obtained for the purpose of applying customer due diligence measures up-to-date.

(3) Section 10B(3) applies to the duty to conduct ongoing monitoring under subsection (1) as it applies to customer due diligence measures.

Timing of verification.

10D.(1) This section applies in respect of the duty under section 10B(1)(a) and (b) to apply the customer due diligence measures referred to in section 10A(a) and (b).

(2) Subject to subsection (3) to (5) and section 10E, a relevant financial business must verify the identity of the customer (and any beneficial owner) before the establishment of a business relationship or the carrying out of an occasional transaction.

(3) Such verification may be completed during the establishment of a business relationship if–

(a) this is necessary not to interrupt the normal conduct of business; and

(b) there is little risk of money laundering or terrorist financing occurring, provided that the verification is completed as soon as practicable after contact is first established.

(4) The verification of the identity of the beneficiary under a life insurance policy may take place after the business relationship has been established provided that it takes place at or before the time of payout or at or before the time the beneficiary exercises a right vested under the policy.

(5) The verification of the identity of a bank account holder may take place after the bank account has been opened provided that there are adequate safeguards in place to ensure that–

(a) the account is not closed; and

(b) transactions are not carried out by or on behalf of the account holder (including any payment from the account to the account holder), before verification has been completed.

Casinos.

10E.(1) A casino must establish and verify the identity of all customers who purchase or exchange gambling chips with a value of 2,000 euro or more.

(2) If the casino is subject to state supervision it shall be deemed to have complied with the customer due diligence requirements if it registers, identifies and verifies the identity of the customer immediately on or before entry, regardless of the number of the gambling chips purchased.

Requirement to cease transactions etc..

10F.(1) Where, in relation to any customer, a relevant financial business is unable to apply customer due diligence measures in accordance with the provisions of this Part, it–

(a) must not carry out a transaction with or for the customer through a bank account;

(b) must not establish a business relationship or carry out an occasional transaction with the customer;

(c) must terminate any existing business relationship with the customer;

(d) must consider whether he is required to make a disclosure to the GFIU.

(2) Subsection (1) does not apply to notaries, independent members of professions which are legally recognised and controlled, auditors and tax advisors who are in the course of ascertaining the legal position for their client or performing the task of defending or representing that client in, or concerning, legal proceedings, including advice on the institution or avoidance of proceedings.

Simplified due diligence.

10G.(1) A relevant financial business is not required to apply customer due diligence measures in the circumstances mentioned in section 10B(1)(a), (b) or (d) where he has reasonable grounds for believing that the customer, transaction or product related to such transaction, falls within any of the following subsections.

(2) The customer is–

(a) a credit or financial institution which is subject to the requirements of the money laundering directive; or

(b) a credit or financial institution (or equivalent institution) which–

(i) is situated in a non-EEA State which imposes requirements equivalent to those laid down in the money laundering directive; and

(ii) is supervised for compliance with those requirements.

(3) The customer is a company whose securities are listed on a regulated market subject to specified disclosure obligations.

(4) The customer is an independent legal professional and the product is an account into which monies are pooled, provided that–

(a) where the pooled account is held in a non-EEA State or Territory–

(i) that State or Territory imposes requirements to combat money laundering and terrorist financing which are consistent with international standards; and

(ii) the independent legal professional is supervised in that State or Territory for compliance with those requirements; and

(b) information on the identity of the persons on whose behalf monies are held in the pooled account is available, on request, to the institution which acts as a depository institution for the account.

(5) The customer is a public authority in Gibraltar.

(6) The customer is a public authority which fulfils all the conditions set out in paragraph 1 of Schedule 1.

(7) The product is–

(a) a life insurance contract where the annual premium is no more than 1,000 euro or where a single premium of no more than 2,500 euro is paid;

(b) an insurance contract for the purposes of a pension scheme where the contract contains no surrender clause and cannot be used as collateral;

(c) a pension, superannuation or similar scheme which provides retirement benefits to employees, where contributions are made by an employer or by way of deduction from an employee's wages and the scheme rules do not permit the assignment of a member's interest under the scheme; or

(d) electronic money, within the meaning of Article 1(3)(b) of the electronic money directive, where–

(i) if the device cannot be recharged, the maximum amount stored in the device is no more than 150 euro; or

(ii) if the device can be recharged, a limit of 2,500 euro is imposed on the total amount transacted in a calendar year, except when an amount of 1,000 euro or more is redeemed in the same calendar year by the bearer (within the meaning of Article 3 of the electronic money directive).

(8) The product and any transaction related to such product fulfils all the conditions set out in paragraph 2 of Schedule 1.

Enhanced customer due diligence and ongoing monitoring.

10H. A relevant financial business must apply on a risk-sensitive basis enhanced customer due diligence measures and enhanced ongoing monitoring–

(a) in accordance with sections 10I to 10K;

(b) in any other situation which by its nature can present a higher risk of money laundering or terrorist financing.

Non face-to-face.

10I. Where the customer has not been physically present for identification purposes, a relevant financial business must take specific and adequate measures to compensate for the higher risk, for example, by applying one or more of the following measures–

(a) ensuring that the customer's identity is established by additional documents, data or information;

(b) supplementary measures to verify or certify the documents supplied, or requiring confirmatory certification by a credit or financial institution which is subject to the Money Laundering Directive;

(c) ensuring that the first payment is carried out through an account opened in the customer's name with a credit institution.

Correspondent banking.

10J. A credit institution ("the correspondent") which has or proposes to have a correspondent banking relationship with a respondent institution ("the respondent") from a non-EEA State or Territory must–

(a) gather sufficient information about the respondent to understand fully the nature of its business;

(b) determine from publicly-available information the reputation of the respondent and the quality of its supervision;

(c) assess the respondent's anti-money laundering and anti-terrorist financing controls;

(d) obtain approval from senior management before establishing a new correspondent banking relationship;

(e) document the respective responsibilities of the respondent and correspondent; and

(f) be satisfied that, in respect of those of the respondent's customers who have direct access to accounts of the correspondent, the respondent-

(i) has verified the identity of, and conducts ongoing monitoring in respect of, such customers; and

(ii) is able to provide to the correspondent, upon request, the documents, data or information obtained when applying customer due diligence measures and ongoing monitoring.

Politically exposed persons.

10K.(1) A relevant financial business who proposes to have a business relationship or carry out an occasional transaction with a politically exposed person must–

(a) have approval from senior management for establishing the business relationship with that person;

(b) take adequate measures to establish the source of wealth and source of funds which are involved in the proposed business relationship or occasional transaction; and

(c) where the business relationship is entered into, conduct enhanced ongoing monitoring of the relationship.

(2) In subsection (1), "a politically exposed person" means a person who is–

(a) an individual who is or has, at any time in the preceding year, been entrusted with a prominent public function by–

(i) another State or territory;

(ii) a Community institution; or

(iii) an international body,

including a person who falls in any of the categories listed in paragraph 3(1)(a) of Schedule 1;

(b) an immediate family member of a person referred to in paragraph (a), including a person who falls in any

of the categories listed in paragraph 3(1)(c) of Schedule 1; or

(c) a known close associate of a person referred to in paragraph (a), including a person who falls in either of the categories listed in paragraph 3(1)(d) of Schedule 1.

(3) For the purpose of deciding whether a person is a known close associate of a person referred to in subsection (2)(a), a relevant financial business need only have regard to information which is in its possession or is publicly known.

Branches and subsidiaries.

10L.(1) A credit or financial institution must require its branches and subsidiary undertakings which are located in a non-EEA State or Territory to apply, to the extent permitted by the law of that State or Territory, measures at least equivalent to those set out in this Act with regard to customer due diligence measures, ongoing monitoring and record-keeping.

(2) Where the law of a non-EEA State or Territory does not permit the application of such equivalent measures by the branch or subsidiary undertaking located in that State or Territory, the credit or financial institution must–

(a) inform its supervisory authority accordingly; and

(b) take additional measures to handle effectively the risk of money laundering and terrorist financing.

(3) In this section "subsidiary undertaking" except in relation to an incorporated friendly society, has the meaning given by section 2 of the Companies (Consolidated Accounts) Act 1999 and, in relation to a body corporate in or formed under the law of an EEA State other than the law of Gibraltar, includes an undertaking which is a subsidiary undertaking within the meaning of any rule of law in force in that State for purposes connected with implementation of the European Council Seventh Company Law Directive 83/349/EEC on consolidated accounts.

Shell banks, anonymous accounts etc..

10M.(1) A credit institution must not enter into, or continue, a correspondent banking relationship with a shell bank.

(2) A credit institution must take appropriate measures to ensure that it does not enter into, or continue, a corresponding banking relationship with a bank which is known to permit its accounts to be used by a shell bank.

(3) A credit or financial institution carrying on business in Gibraltar must not set up an anonymous account or an anonymous passbook for any new or existing customer.

(4) As soon as reasonably practicable on or after 15th December 2007 all credit and financial institutions carrying on business in Gibraltar must apply customer due diligence measures to, and conduct ongoing monitoring of, all anonymous accounts and passbooks in existence on that date and in any event before such accounts or passbooks are used.

(5) A "shell bank" means a credit institution, or an institution engaged in equivalent activities, incorporated in a jurisdiction in which it has no physical presence involving meaningful decision making and management, and which is unaffiliated with a regulated financial group.

Reliance.

10N. (1) A relevant financial business may rely on a person who falls within subsection (2) (or who the relevant financial business has reasonable grounds to believe falls within subsection (2)) to apply any customer due diligence measures provided that–

(a) the other person consents to being relied on; and

(b) notwithstanding the relevant person's reliance on the other person, the relevant person remains liable for any failure to apply such measures.

(2) The persons are–

(a) a credit or financial institution which is an authorised person;

(b) an auditor, insolvency practitioner, external accountant, tax adviser or independent legal professional supervised for the purposes of this Act by one of the bodies listed in Part 1 of Schedule 2;

(c) a person who carries on business in another EEA state who is–

(i) a credit or financial institution, auditor, insolvency practitioner, external accountant, tax adviser or independent legal professional;

(ii) subject to mandatory professional registration recognised by law; and

(iii) supervised for compliance with the requirements laid down in the money laundering directive in accordance with section 2 of Chapter V of that directive; or

(d) a person who carries on business in a non-EEA state who is–

(i) a credit or financial institution (or equivalent institution), auditor, insolvency practitioner, external accountant, tax adviser or independent legal professional;

(ii) subject to mandatory professional registration recognised by law;

(iii) subject to requirements equivalent to those laid down in the Money Laundering Directive; and

(iv) supervised for compliance with those requirements in a manner equivalent to section 2

of Chapter V of the Money Laundering Directive.

(3) In subsection (2)(c)(i) and (d)(i), "auditor" and "insolvency practitioner" includes a person situated in another EEA state or a non-EEA state who provides services equivalent to the services provided by an auditor or insolvency practitioner.

(4) Nothing in this section prevents a relevant financial business applying customer due diligence measures by means of an outsourcing service provider or agent provided that the relevant person remains liable for any failure to apply such measures.

(5) In this section, "financial institution" excludes money service businesses.

Directions where Financial Action Task Force applies counter-measures.

10O.(1) The Minster may direct any relevant financial business–

(a) not to enter into a business relationship;

(b) not to carry out an occasional transaction; or

(c) not to proceed any further with a business relationship or occasional transaction,

with a person who is situated or incorporated in a non-EEA State or Territory to which the Financial Action Task Force has decided to apply counter-measures.

(2) Where the Minister issues a direction under subsection (1) he shall cause that direction to be published in the Gazette.

Record-keeping, procedures and training

Record-keeping.

10P.(1) Subject to subsection (4), a relevant financial business must keep the records specified in subsection (2) for at least the period specified in subsection (3).

(2) The records are–

(a) a copy of, or the references to, the evidence of the customer's identity obtained pursuant to section 10B, 10C,10E, 10H, 10I, 10J, 10K or 10L(4);

(b) the supporting records (consisting of the original documents or copies) in respect of a business relationship or occasional transaction which is the subject of customer due diligence measures or ongoing monitoring.

(3) The period is five years beginning on–

(a) in the case of the records specified in subsection (2)(a), the date on which–

(i) the occasional transaction is completed; or

(ii) the business relationship ends; or

(b) in the case of the records specified in subsection (2)(b)–

(i) where the records relate to a particular transaction, the date on which the transaction is completed;

(ii) for all other records, the date on which the business relationship ends.

(4) A relevant financial business who is relied on by another person must keep the records specified in subsection (2)(a) for

five years beginning on the date on which he is relied on for the purposes of sections 10B, 10E, 10H, 10I,10J, 10K or 10M(4) in relation to any business relationship or occasional transaction.

(5) A person referred to in section 10N(1) (a "third party") who is relied on by a relevant financial business must, if requested by the person relying on him within the period referred to in subsection (4)–

(a) as soon as reasonably practicable make available to the person who is relying on him any information about the customer (and any beneficial owner) which he obtained when applying customer due diligence measures; and

(b) as soon as reasonably practicable forward to the person who is relying on him copies of any identification and verification data and other relevant documents on the identity of the customer (and any beneficial owner) which he obtained when applying those measures.

(6) A relevant financial business who relies on a person referred to in section 10N(1) (a "third party") to apply customer due diligence measures must take steps to ensure that the third party will, if requested by the relevant financial business within the period referred to in subsection (4)–

(a) as soon as reasonably practicable make available to him any information about the customer (and any beneficial owner) which the third party obtained when applying customer due diligence measures; and

(b) as soon as reasonably practicable forward to him copies of any identification and verification data and other relevant documents on the identity of the customer (and any beneficial owner) which the third party obtained when applying those measures.

(7) Subsection (5) and (6) do not apply where a relevant financial business applies customer due diligence measures by means of an outsourcing service provider or agent.

Policies and procedures.

10Q.(1) A relevant financial business must establish and maintain appropriate and risk-sensitive policies and procedures relating to–

(a) customer due diligence measures and ongoing monitoring;

(b) reporting;

(c) record-keeping;

(d) internal control;

(e) risk assessment and management;

(f) the monitoring and management of compliance with, and the internal communication of, such policies and procedures, in order to prevent activities related to money laundering and terrorist financing.

(2) The policies and procedures referred to in subsection (1) include policies and procedures–

(a) which provide for the identification and scrutiny of–

(i) complex or unusually large transactions;

(ii) unusual patterns of transactions which have no apparent economic or visible lawful purpose; and

(iii) any other activity which the relevant financial business regards as particularly likely by its nature to be related to money laundering or terrorist financing;

(b) which specify the taking of additional measures, where appropriate, to prevent the use for money laundering or terrorist financing of products and transactions which might favour anonymity;

(c) to determine whether a customer is a politically exposed person;

(d) under which–

(i) an individual in the relevant financial business's organisation is the appropriate person nominated to receive disclosures under section 18;

(ii) anyone in the organisation to whom information or other matter comes in the course of the business as a result of which he knows or suspects or has reasonable grounds for knowing or suspecting that a person is engaged in money laundering or terrorist financing is required to comply with Part II of this Act;

(iii) where a disclosure is made to the appropriate person, he must consider it in the light of any relevant information which is available to the relevant financial business and determine whether it gives rise to knowledge or suspicion or reasonable grounds for knowledge or suspicion that a person is engaged in money laundering or terrorist financing.

(3) Subsection (2)(d) does not apply where the relevant financial business is an individual who neither employs nor acts in association with any other person.

(4) A credit or financial institution must establish and maintain systems which enable it to respond fully and rapidly to enquiries from the GFIU as to–

(a) whether it maintains, or has maintained during the previous five years, a business relationship with any person; and

(b) the nature of that relationship.

(5) A credit or financial institution must communicate where relevant the policies and procedures which it establishes and maintains in accordance with this section to its branches and subsidiary undertakings which are located outside Gibraltar.

(6) In this section–

"politically exposed person" has the same meaning as in section 10K(2);

"subsidiary undertaking" has the same meaning as in section 10L.

Training.

10R. A relevant financial business must take appropriate measures so that all relevant employees of his are–

(a) made aware of the law relating to money laundering and terrorist financing; and

(b) regularly given training in how to recognise and deal with transactions and other activities which may be related to money laundering or terrorist financing.".

Repeal of sections 11 to 17.

10. Sections 11 to 17 of the principal Act are repealed.

Amendment of section 19.

11. Section 19 of the principal Act is amended–

(a) by substituting for subsection (2) the following subsection–

"(2) For the purposes of this Part, each of the bodies listed in Part I of Schedule 2 shall be a supervisory authority.";

(b) by inserting after subsection (2)–

"(3) The Minister may by Order published in the Gazette add, delete or amend the supervisory authorities listed in Part I of Schedule 2.".

New section 19A.

12. After section 19 of the principal Act insert–

"Duties of supervisory authorities.

19A. A supervisory authority must effectively monitor the relevant persons for whom it is the supervisory authority and take necessary measures for the purpose of securing compliance by such persons with the requirements of this Act.

(2) Where under section 19 there is more than one supervisory authority for a relevant person, the supervisory authorities shall agree between them which one shall act as the supervisory authority for that person and shall notify that person accordingly.".

Amendment of section 20.

13. For section 20(6) of the principal Act substitute–

"(6)(a) Persons falling within this section are persons or inspectors appointed under an enactment set out in Part II of Schedule 2;

(b) The Minister may by Order published in the Gazette add, delete or amend the list of enactments set out in Part II of Schedule 2."

New sections 20A and 20B.

14. After section 20 of the principal Act insert–

"Criminal offences.

20A.(1) A person who fails to comply with any requirement in sections 10B(1), (2) or (3), 10C(1) or (3), 10D(2), 10E, 10F(1)(a), (b) or (c), 10H, 10L(1) or (2), 10M(1), (2), (3) or (4), 10P(1), (4), (5) or (6), 10Q(1), (4) or (5) or 10R, or a direction made under section 10N, is guilty of an offence and liable–

(a) on summary conviction, to a fine not exceeding level 5 on the standard scale;

(b) on conviction on indictment, to imprisonment for a term not exceeding two years, to a fine or to both.

(2) In deciding whether a person has committed an offence under subsection (1), the court must consider whether he followed any relevant guidance which was at the time issued by a supervisory authority or any other appropriate body.

(3) In subsection (2), an "appropriate body" means any body which regulates or is representative of any trade, profession, business or employment carried on by the alleged offender.

(4) A person is not guilty of an offence under this section if he took all reasonable steps and exercised all due diligence to avoid committing the offence.

Offences by bodies corporate, partnerships and unincorporated associations.

20B.(1) Where an offence under a provision of this Act committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any other person who was purporting to act in any such capacity he, as well as the body corporate, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by the members, subsection (1) shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of a body corporate.

(3) Where an offence is committed by a partnership, or by an unincorporated association other than a partnership, is proved to have been committed with the consent or connivance of, or is attributable to any neglect on the part of, a partner in the partnership or (as the case may be) a person concerned in the management or control of the association he, as well as the partnership or association, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.".

Repeal of section 21.

15. Section 21 of the principal Act is repealed.

Amendment of section 23.

16. In section 23(6) of the principal Act for "Government" substitute "Minister".

Amendment of section 42.

17. In section 42 of the principal Act wherever "Governor" appears substitute "Minister".

Amendment of section 44.

18. In section 44 of the principal Act after the definition "interest" insert–

"Minister" means the Minister with responsibility for finance;".

Insertion of schedules.

19. At the end of the principal Act insert the following schedules–

"SCHEDULE 1

Sections 10G, 10K

Simplified due diligence.

1. For the purposes of section 10G(6), the conditions are–

(a) the authority has been entrusted with public functions pursuant to the Treaty on the European Union, the Treaties on the European Communities or Community secondary legislation;

(b) the authority's identity is publicly available, transparent and certain;

(c) the activities of the authority and its accounting practices are transparent;

(d) either the authority is accountable to a Community institution or to the authorities of an EEA State, or otherwise appropriate check and balance procedures exist ensuring control of the authority's activity.

2. For the purposes of section 10G(8), the conditions are–

(a) the product has a written contractual base;

(b) any related transaction is carried out through an account of the customer with a credit institution which is subject to the Money Laundering Directive or with a credit institution situated in a non-EEA State which imposes requirements equivalent to those laid down in that directive;

(c) the product or related transaction is not anonymous and its nature is such that it allows for the timely application of customer due diligence measures where there is a suspicion of money laundering or terrorist financing;

(d) the product is within the following maximum threshold–

(i) in the case of insurance policies or savings products of a similar nature, the annual premium is no more than 1,000 euro or there is a single premium of no more than 2,500 euro;

(ii) in the case of products which are related to the financing of physical assets where the legal and beneficial title of the assets is not transferred to the customer until the termination of the contractual relationship (whether the transaction is carried out in

a single operation or in several operations which appear to be linked), the annual payments do not exceed 15,000 euro;

(iii) in all other cases, the maximum threshold is 15,000 euro;

(e) the benefits of the product or related transaction cannot be realised for the benefit of third parties, except in the case of death, disablement, survival to a predetermined advanced age, or similar events;

(f) in the case of products or related transactions allowing for the investment of funds in financial assets or claims, including insurance or other kinds of contingent claims–

(i) the benefits of the product or related transaction are only realisable in the long term;

(ii) the product or related transaction cannot be used as collateral; and

(iii) during the contractual relationship, no accelerated payments are made, surrender clauses used or early termination takes place.

Politically exposed persons.

3.(1) For the purposes of section 10K(2)–

(a) individuals who are or have been entrusted with prominent public functions include the following–

(i) heads of state, heads of government, ministers and deputy or assistant ministers;

(ii) members of parliaments;

(iii) members of supreme courts, of constitutional courts or of other high-level judicial bodies whose decisions are not generally subject to further appeal, other than in exceptional circumstances;

(iv) members of courts of auditors or of the boards of central banks;

(v) ambassadors, chargés d'affaires and high-ranking officers in the armed forces; and

(vi) members of the administrative, management or supervisory bodies of state-owned enterprises;

(b) the categories set out in paragraphs (i) to (vi) of sub-paragraph (a) do not include middle ranking or more junior officials;

(c) immediate family members include the following–

(i) a spouse;

(ii) a partner;

(iii) children and their spouses or partners; and

(iv) parents;

(d) persons known to be close associates include the following–

(i) any individual who is known to have joint beneficial ownership of a legal entity or legal arrangement, or any other close business relations, with a person referred to in section 10J(5)(a); and

(ii) any individual who has sole beneficial ownership of a legal entity or legal arrangement which is known to have been set up for the benefit of a person referred to in section 10J(5)(a).

(2) In paragraph (1)(c) "partner" means a person who is considered by his national law as equivalent to a spouse.

SCHEDULE 2

Section 19(2)

PART I

The following are supervisory bodies–

(a) the Financial Services Commission;

(b) the Authority appointed under section 2(1) of the Financial Services (Investment and Fiduciary Services) Act;

(c) the Commissioner of Banking and the Banking Supervisor;

(d) the Commissioner of Insurance and the Insurance Supervisor;

(e) the Financial Secretary, or such other person or entity as may from time to time be designated by the Minister for Finance by notice in the Gazette in respect of relevant financial businesses to which section 8(1) applies and which are not supervised by a body listed in paragraphs (a) to (d).

PART II

(a) the Financial Services (Banking) Act, 1992;

(b) the Insurance Companies Act, 1987;

(c) the Financial Services (Investment and Fiduciary Services) Act, 1989;

(d) the Companies Act.".

General.

20.(1) The words and phrases set out in column 1 of the Schedule shall, wherever they appear in the principal Act, be substituted by the words and phrases set out in column 2 of the Schedule.

(2) Subsection (1) shall not apply to the references to "Police or Customs" in sections 3(10) and 30(10) of the principal Act nor to the reference in section 4 of this Act.

SCHEDULE

Section 17

Column 1 (Current words and expressions)	Column 2 (new words and expressions)
A customs or police officer	the GFIU
A Police or Customs Officer	the GFIU
the Police or Customs Officer	the GFIU
Financial Services Act 1989	Financial Services (Investment and Fiduciary Services) Act
Financial Services (Banking) Act 1992	Financial Services (Banking) Act
Banking Act, 1992	Financial Services (Banking) Act

EXPLANATORY MEMORANDUM

This Act amends the Criminal Justice Act 1995 ("the principal Act") so as to partly transpose Directive 2005/60/EC on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing (also known as the Third Money Laundering Directive) and to fully transpose Directive 2006/70/EC laying down implementing measures for Directive 2005/60/EC as regards the definition of 'politically exposed person' and the technical criteria for simplified customer due diligence procedures and for exemption on grounds of a financial activity conducted on an occasional or very limited basis.

This Bill also amends the short title of the Criminal Justice Act 1995 to the Crime (Money Laundering and Proceeds) Act 2007.

Amendments to the Terrorism Act 2005 complete the transposition of the aforementioned directives.

In addition the Minister with responsibility for finance will be able to issue directions to persons or entities where the Financial Action Task Force has decided to apply counter-measures.

Printed by the Gibraltar Chronicle Limited
Printing Office, 2, Library Gardens,
Government Printers for Gibraltar,
Copies may be purchased at 6, Convent Place, Price £2.15p